

**COURT OF APPEALS
DECISION
DATED AND RELEASED**

June 8, 1995

A party may file with the Supreme Court a petition to review an adverse decision by the Court of Appeals. See § 808.10 and RULE 809.62(1), STATS.

NOTICE

This opinion is subject to further editing. If published, the official version will appear in the bound volume of the Official Reports.

Nos. 94-0796
94-0801

STATE OF WISCONSIN

IN COURT OF APPEALS
DISTRICT IV

No. 94-0796

STATE OF WISCONSIN EX REL.
LARRY GEORGE,

Petitioner-Appellant,

v.

LIN MECHLER,

Respondent-Respondent.

No. 94-0801

STATE OF WISCONSIN EX REL.
LARRY GEORGE,

Petitioner-Appellant,

v.

GRACE BROWN,

Respondent-Respondent.

APPEALS from orders of the circuit court for Dodge County:
JOSEPH E. SCHULTZ, Judge. *Affirmed.*

Before Eich, C.J., Dykman and Sundby, JJ.

PER CURIAM. Larry George appeals from two orders dismissing his petitions for writs of mandamus in two public records cases.¹ The issues are whether requiring a disbursement request with a public records request violates § 19.35(3)(f), STATS., and whether George's ABLE test scores constitute records under § 19.35(1)(am), and, if they do, whether § 19.37(2), STATS., authorizes a \$100 minimum damage award. We conclude that requiring a disbursement request does not violate § 19.35(3)(f) under *State ex rel. Christie v. Vande Zande*, 187 Wis.2d 591, 595, 523 N.W.2d 166, 167 (Ct. App. 1994). We also conclude that George's ABLE test scores² contain "personally identifiable information" under § 19.35(1)(am), but that he is not entitled to damages under § 19.37(2)(b) because he has not shown that Grace Brown acted wilfully or intentionally. Therefore, we affirm.

In appeal No. 94-0796, George requested a copy of his visiting list. Lin Mechler, a Social Services Department Program Assistant, directed George to complete a disbursement request for fifteen cents. George brought a mandamus action contending that Mechler's response violated § 19.35(3)(f), STATS., which authorizes prepayment only if the copying charge exceeds five dollars. The trial court concluded that requiring an inmate to complete a disbursement request does not constitute prepayment under § 19.35(3)(f).

¹ These appeals were consolidated by this court on June 22, 1994.

² George describes an ABLE test as covering math, reading and spelling.

In *Christie*, we concluded that a disbursement request which merely begins the disbursement process, does not constitute prepayment. *Christie*, 187 Wis.2d at 595, 523 N.W.2d at 167. Consequently, requiring a disbursement request with a record request does not violate § 19.35(3)(f), STATS. *Id.* Although we conclude that *Christie* was wrongly decided, we are bound by published opinions of this court. Section 752.41(2), STATS.

In appeal No. 94-0801, George requested a copy of his ABLE test scores for a job application. George asserts that all inmates are required to take ABLE tests and that the scores are posted publicly. Despite public posting, George's ABLE test scores contain "personally identifiable information pertaining to [George]." Section 19.35(1)(am), STATS. Section 19.35(1)(am) does not distinguish between private and public records "containing personally identifiable information pertaining to [George]." Consequently, § 19.35(1)(am) applies to George's ABLE test scores and he has a right to inspect and copy them.

The remaining issue is whether George is entitled to damages and actual costs under § 19.37(2), STATS. Although § 19.37(2)(a) authorizes such an award, § 19.37(2)(b) provides:

In any action filed under sub. (1) *relating to access to a record or part of a record under s. 19.35(1)(am), if the court finds that the authority acted in a wilful or intentional manner, the court shall award the individual actual damages sustained by the individual as a consequence of the failure.*

(Emphasis added).

George's request for ABLE test scores falls within § 19.35(1)(am), STATS. Section 19.37(2)(b), STATS., limits its damage award to an authority's "wilful or intentional" refusal, rather than authorizing a minimum damage award of \$100 to a "requester [who] prevails in whole or in substantial part in any action filed under sub. (1) relating to access to a record or part of a record

under s. 19.35(1)(a)." Section 19.37(2)(a). The plain language of § 19.37(2)(a) applies to record requests under § 19.35(1)(a). The plain language of § 19.37(2)(b) applies to record requests containing personally identifiable information under § 19.35(1)(am). George has not shown that Brown wilfully or intentionally withheld his requested test scores. Consequently, he is not entitled to damages under § 19.37(2)(b) for the denial of his § 19.35(1)(am) request.

By the Court. – Orders affirmed.

This opinion will not be published. See RULE 809.23(1)(b)5, STATS.